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Beatrice J. Boyle v. Glen A. Baggs and Freddie Baggs : Brief of Respondent

Utah Supreme Court

Richards, Alsup & Richards; Attorneys for Respondents;

IN THE

Supreme Court of the State of Utah

BEATRICE J. BOYLE, now Beatrice J. Boyle Wynes,
Plaintiff and Appellant,

vs.

GLEN A. BAGGS and FREDDIE BAGGS, his wife,
Respondents and Claimants.

Case No. 9141

RESPONDENT'S BRIEF

RICHARDS, ALSUP & RICHARDS
Attorneys for Respondents

DEE LITHO — OGDEN

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STATEMENT OF FACTS

The record contains a Memorandum of Authorities submitted by respondents to the trial court. However, this present brief contains the authorities cited in the memorandum and the arguments made therein. Reference to the memorandum in the record is, therefore, unnecessary.

There is no factual dispute. Respondents emphasize, however, the fact that up until the time they purchased Boyle's property there had been only one judgment or decree docketed in the Boyle divorce — the original decree granting the wife a divorce and awarding monthly installments of support money. When respondents purchased Boyle's property they had an attorney examine the abstract and that at-

torney told respondents the divorce decree was a cloud on the title. The matter was then referred to a second attorney who, relying on Utah Title Standard No. 26, advised respondents the divorce decree was not a cloud on the title.

STATEMENT OF POINTS

Respondents will answer each of the points raised by the appellant, viz:

1. Granting the motion to dismiss was not error.

2. A decree awarding future installments of alimony or support money does not create a lien against the husband's real property as monthly installments accrue.

3. The fact that respondents, before purchasing Boyle's property, were advised of the divorce decree is immaterial.

ARGUMENT

POINT I.

GRANTING OF THE MOTION TO DISMISS WAS NOT ERROR.

Respondents' Motion to Dismiss was based upon a failure of the petition to state a claim upon which relief could be granted. An affidavit accompanied the motion, and at the hearing on the motion the court invited the appellant to present additional evidence. Presumably, then, the court treated the motion as one for summary judgment. In any event, we look to the petition filed by appellant to determine if, admitting the truth of all the allegations thereof, it states any cause of action.

The petition says two things: (1) At the time respondents purchased the property there were unpaid installments due under the Boyle divorce decree and these unpaid installments were a lien on Boyle's property; and (2) respondents were advised that the decree for future installments was a lien on the property. Being thus put on notice, they cannot now deny the lien.

If either one of these propositions is a correct statement of the law, the petition stated a cause of action and the dismissal was error. If neither is a proper statement of law, the petition doesn't state a claim on which relief can be granted. Respondents do not quarrel with the cases cited by appellant on this point. The cases undoubtedly are correct. Respondents' objection is not to the form of the petition but to its substance. In substance, it resolves itself into an examination of the legal correctness of the two propositions above stated. Respondents contend both propositions are incorrect and that the petition, therefore, stated no facts permitting legal redress. If that is true, it serves no useful purpose to review the cases. Under the most liberal pleading view there must be some statement of a legal claim. To determine the correctness of the court's ruling, then, we must examine Points 2 and 3.

POINT II.

A DECREE AWARDING FUTURE INSTALLMENT OF ALIMONY OR SUPPORT MONEY DOES NOT CREATE A LIEN AGAINST HUSBAND'S REAL PROPERTY AS MONTHLY INSTALLMENTS ACCRUE.

In considering this point we deem it proper to refer first to Title Standard No. 26 of the Utah State Bar Association, which provides:

> "Does a judgment for future monthly installments of alimony constitute a lien on real property of the defendant?
>
> "No.
>
> "While this is true as to the usual judgment for future installments, the rule may be otherwise if the judgment is for past due installments, for a lump sum amount, or if it specifically provides that the judgment shall constitute a lien."

Attorneys generally have followed this standard for many years. Some attorneys have questioned it. Mr. Paul B. Cannon of the Salt Lake County Bar wrote an article in support of this standard in the July-September, 1949, Utah Bar Bulletin. We refer the court to this article. Admittedly, attorneys don't make the law. The court is not bound by the title standard. Admittedly, also, there is substantial authority contrary to the rule thus announced. See the annotation cited by appellant in 50 A.L.R. 2, 651. There will be great confusion in Utah property titles and substantial distress among the Bar if appellant prevails and the title standard is now, after all these years, rejected. Nonetheless, we admit that the court can't concern itself exclusively with the immediate consequences of its rulings but is bound by the dictates of logic, reasonableness and, when applicable, stare decisis.

The title standard rule is reasonable and it is logically correct. Under our law, a judgment is a lien from the time it is docketed (78-22-1, U.C.A., 1953). By negative inferences,

if nothing is docketed there can be no lien. Now, what judgments create liens? Among other requirements, the judgment must be for a definite and certain sum of money. See 49 C.J.S., Judgments, paragraph 458. In Beesley vs. Badger et al, 66 Utah 194, 240 Pacific 458, the court said:

> ". . . . That a money judgment may be a lien, it is essential, not only that there be a valid and subsisting judgment rendered by a court of competent jurisdiction and subject to collection by execution, but the judgment must also be for the payment of a definite and certain sum of meny."

Our next inquiry, then, is whether or not a decree of divorce which provides for indefinite installments of support money creates a lien when docketed. Clearly not, because there is no money judgment for a sum certain. There is no money judgment because as of the date of the decree nothing is due from the father. There is no certain sum because the installments are for an indefinite period of time. That is the specific holding of Beesley vs. Badger. The court asks itself if the divorce decree as alleged (involving installment payments of alimony) constituted a lien on the husband's real estate, and it answers the question thus:

> "A judgment or decree awarding alimony in a gross sum, though payable in future installments, is nevertheless definite and certain as to the sum of money to be paid. So is a decree as to past-due and unpaid installments. In such instances the amount due and to be paid to discharge the lien is certain and definite, and, if sought to be enforced by execution, the amount due and unpaid can be stated in the writ of execution. But not so as to

future installments of a decree awarding alimony of a stated sum to be paid monthly covering an indefinite period."

We know, then, that this Boyle decree when docketed created no lien. The next inquiry is whether or not a lien was created automatically as installments became due and were unpaid. This question takes us back to our original inquiry as to what creates a lien. Liens do not arise automatically. They arise by virtue of docketing. Nothing is docketed with respect to unpaid installments and, therefore, no lien arises. That, it would seem to us, is the logic of the problem. You can't ignore the statute as to what creates a lien. You can't create something out of nothing. If a wife wants a lien, she must reduce the deficiency to judgment so that there is something to be docketed.

On page 17 of her brief appellants says this:

"A divorce decree awarding support money differs from a lump sum money judgment only in that it is payable in monthly installments. In both judgments an award of money is made to the plaintiff, which if not paid, is a lien against any real property of the defendant. To ascertain what amount is due requires a look at the calendar to see what installments have accrued under the divorce decree and to see what interest has accrued This is also true under an ordinary money judgment."

If our reasoning above is correct, and if Beesley vs. Badger is correct, this statement of appellant's is patently wrong. A divorce decree providing for installment payments of alimony differs from a lump sum money judgment in that in one

case there is a sum certain to be paid, and in the other there is not. This is the distinguishing feature. Appellant, then, says in effect that it is easy in both cases to determine how much is due. The difference, however, is that in the lump sum judgment you have an immediate lien created by docketing, and your inquiry is into the extent of the lien. In the installment alimony situation, you never have the one act that creates the lien to begin with — the docketing of a judgment for a definite sum.

It serves little purpose to review decisions from other jurisdictions because the cases vary according to the particular statutes involved. However, we might look to a few cases to see the rationale of the courts.

In Leifert vs. Wolfer (North Dakota) 25 NW 2nd 690, there was an award of attorney's fees and costs and monthly installments of child support. The court startes that the decree as to the attorney's fees and costs is a lien on the father's property because it is a judgment for a sum certain. It then states:

> "We have noted the distinction between a judgment for alimony in a fixed amount and one for an undetermined amount with stated payments until changed. In the former case there is a judgment for a specific amount and this judgment is a lien upon real estate by statute independent of the court's action declaring it a lien. When there is no stated amount, but the decree requires monthly payments before any lien attaches there must be some judicial determination of the amount due. . . . .
>
> "The lien defendant claims is based upon the pro-

visions of the decree of divorce. The only lien the court could create is a judgment lien as created by statute, and no judgment was sought nor entered for unpaid installments of alimony. Under proper procedure it could have entered judgment for unpaid installments and thus have granted a judgment lien."

Again in Robinson vs. Robinson (Florida) 18 SO. 2nd 29, there was a judgment for future installments of alimony and for attorney's fees and costs. In refusing a lien as to delinquent alimony installments the Florida court said:

". . . . It seems that the latter items (fees and costs) would be governed by the law relating to garnishment after judgment, but it occurs to us that the former does not fall in the same category.

"Allotments for permanent alimony do not become liens when made because from their very nature they are indeterminate and inconclusive. (Quoting case) they may be adjusted or revised because of change in circumstances of the parties, or they may be discontinued because of remarriage of the wife or the death of one party. Such allowances may, of course, become judgments if after default a competent court adjudges them due and payable, ..." (Parenthesis added).

Similar reasoning is found in Swanson vs. Graham et al (Washington) 179 Pac. 2nd, 288, wherein the court quotes an earlier Washington case as follows:

"The general rule seems to be that a decree for alimony creates no lien upon the estate of the husband, in the absence of statutes so providing, unless the decree fastens it upon some particular property. It is a personal

"Accrued judgments for unpaid alimony installments are a basis for writs of garnishment, writs of attachment and general executions, and may be collected through contempt proceedings. But do such judgments, as they accrue, become a lien on the property of the defendant? What is it, under the statute, which creates the lien? It is the entry of the judgment, and the extent of the lien is limited to the amount of such judgment, plus interest and costs. At the time a judgment providing for future payments of alimony installments is entered, there is no debt due. There is nothing to secure. There is nothing for which a lien could come into being. (The situation would be different, of course, if the judgment provided for alimony in a lump sum.) As the installments accrue and are unpaid, they become judgments. But such judgments do not become statutory liens. In order to create a statutory lien there must be a judgment for a specific amount and it must be entered. Immediately upon its being entered, in order to secure its collection, the defendants property is encumbered. It is then impressed with the lien."

Admittedly there is authority both ways on this question. It seems to us, however, that the rule of the title standard is the one that is logical. Also, it seems to be the most reasonable rule. As some of the courts point out, any other rule would impose almost impossible restraints upon the alienation of real property. Suppose the rule were as appellant would have it. A divorced man desires to sell property and the judgment in the divorce case shows only an award of alimony in installments. The man paid alimony for years directly to his former

wife and until she remarried and moved away. The former wife can't be located to give a release. How can he possibly sell that property? You can't determine that there are no unpaid installments, and hence you don't know if there is a lien or not. Possibly he could go to court and publish notice to his missing former wife and get some sort of decree that nothing is payable, but that is a questionable procedure that might be subject to collateral attack. In this day of such divorce prevalence the rule sought by appellant would tie up property so that most titles would be bad. It is reasonable to require of a purchaser of real property that he examine the judgment roll. To require anything more than that, however, is to impose quite frightening obligations upon the purchaser. The object of modern law should be and is to make it easy, not difficult, to transfer titles.

Divorces are unique, and remedies are granted to the aggrieved wife and mother that are not available to any other creditor. Only for an alimony or support money debt can the debtor be imprisoned. Similarly, in the normal judgment laches cannot operate to defeat the judgment. However, laches can excuse the payment of installments of support money. The Utah court points this out in Openshaw vs. Openshaw, 105 Utah 574, 144 P. 2nd 528. There are many other matters that can properly be considered in determining the amount of an alimony or support money delinquency. For example, the father may show that he in fact had custody of and supported the child during the period of claimed delinquency. It doesn't seem to make sense to encumber real property titles with the many uncertainties attendant upon alimony quarrels. This

is particularly true when there is a very simple, orderly procedure available to the aggrieved wife — the reducing of any delinquencies to judgment.

POINT III.

THE FACT THAT RESPONDENTS BEFORE PURCHASING BOYLE'S PROPERTY WERE ADVISED OF THE DIVORCE DECREE IS IMMATERIAL.

Respondents are not certain exactly what appellant claims by her Point III. Apparently it is one of two things, or both, viz:

(a) Notice of the existence of the Boyle decree before they purchased the property put respondents on a duty of inquiry, and had they made proper inquiry they would have discovered there were unpaid installments; and

(b) Since respondents had notice of the decree they are not bona fide purchasers for value and hence cannot cut off appellant's lien.

Appellant cites no authority to support her contention and neither do we. However, the question involves the duty of a buyer of property. How far must he go in making an inquiry? The answer would seem to be that he must go far enough into the record to determine if there is a judgment lien against the property being purchased. He satisfies this requirement when he examines the judgment roll to determine if there is a judgment or decree and, if so, the nature thereof. It is not necessary and should not be necessary that he go beyond the judgment roll because if there is a lien it arises

by virtue of the docketing in the judgment roll. Again, if he is required to go beynd that the purchaser just can't safely buy property in many instances. In this case, the petition states respondents were advised that there was a judgment lien for alimony and support money against the seller which was a cloud on the title. The question whether or not a particular attorney determined the judgment to be a lien or a cloud is not important. The important inquiry is whether or not, in fact, the judgment was a lien or a cloud. If it is not, respondents were entitled to purchase the property free of any lien even if every attorney in the state advised otherwise.

At page 20 of her brief appellant states that respondents are not bona fide purchasers for value because they disregarded their counsel's advice regarding the title. Again, it seems to us the inquiry is whether or not there was, in fact, a lien. The injection of this thought of bona fide purchasers into the case requires that we examine into the nature of judgment liens. If these liens are equitable liens, an inquiry into the bona fides of the parties is proper. The lien, however, is not an equitable interest in the property. It is a legal right. It is something that is enforced in law and not in equity. The nature of a judgment lien is discussed in 49 C.J.S. Judgments, paragraph 455, wherein we find the following language:

> " . . . the lien of a judgment does not constitute or create an estate, interest, or right of property in the lands which may be bound for its satisfaction; it gives merely the right to levy on such lands to the

exclusion of adverse interests subsequent to the judgment; . . . .

"The lien of a judgment is merely an incident of the judgment, and may not exist independently of the judgment; nor does the loss of the lien necessarily impair the validity of the judgment as a personal security. The lien of a judgment creditor on real propertyy is a legal lien and is a right as distinguished from a remedy."

Since the lien is a legal right it is not subject to being cut off by a bona fide purchaser. If the lien exists, it is enforceable against the purchaser irrespective of his notice. Our inquiry, then, is strictly an inquiry into whether or not the lien exists. The controlling issue in this appeal, it seems to us, is Point Number 2.

This question of notice as raised by appellant does suggest one other possibility. As alimony delinquencies accrue the wife acquires a vested right to reduce the same to judgment. Thus she acquires a vested right to acquire a lien against the delinquent husband's property. Is it possible this vested right to acquire a lien creates in her an equitable interest in the husband's property?

To answer this question we must again consider the nature of the lien, and we refer again to paragraph 455, 49 C.J.S., Judgments, quoted above. Note that the lien itself creates no "estate, interest or right of property in the lands which may be bound for its satisfaction . . . " If the lien itself creates no interest in the land, how can the right to ac-

quire a lien create an interest? The question answers itself; and it seems to us it also answers appellant's arguments concerning notice.

There is perhaps one situation in which an inquiry into notice to the prospective purchaser might be proper. If through misspelling of names or other error the judgment lien is defective, the judgment creditor might properly be permitted to show the buyer had notice of the defect or notice of a judgment against the seller. Of course, we don't have that situation in our case.

CONCLUSION

Respondents respectfully urge the court to follow the rule of the title standard in this case. We feel, however, we are in a position to so urge not just because it is the title standard rule and not just because it has been approved by the bar generally, but because it is the logical rule. It is the reasonable one. It is the rule that fosters free alienation of property. It is the rule which conforms to the greater public good.

Respectfully submitted,

RICHARDS, ALSUP & RICHARDS
Attorneys for Respondents